

FCC MAIL SECTION

Federal Communications Commission

DA 99-630

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DISPATCHED  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.606(b),	)	MM Docket No. 99-114
Table of Allotments,	)	RM-8902
TV Broadcast Stations.	)	
(Lake Havasu City, Arizona, and	)	
Laughlin, Nevada)	)	
	)	
Amendment of Section 73.622(b),	)	
DTV Table of Allotments,	)	
DTV Broadcast Stations.	)	
(Lake Havasu City, Arizona, and	)	
Laughlin, Nevada)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 31, 1999

Released: April 9, 1999

By the Chief, Allocations Branch:

Comment Date: May 31, 1999

Reply Comment Date: June 15, 1999

1. The Commission has before it the Petition for Rule Making and a Supplement to Petition for Rule Making filed by Mojave Broadcasting Company (formerly Meridian Communications Company), permittee of television Station KMCC, Channel 34+, Lake Havasu City, Arizona. Specifically, Mojave Broadcasting Company ("Mojave Broadcasting") proposes reallocation of its NTSC Channel 34+ from Lake Havasu City, Arizona, to Laughlin, Nevada, and modification of its Station KMCC construction permit to specify Laughlin, Nevada as its community of license. In a related vein, Mojave Broadcasting also proposes the reallocation of its DTV Channel 32 from Lake Havasu City to Laughlin.

2. Mojave Broadcasting filed its Petition for Rule Making pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest. In order to be favorably considered, the proposal must result in a preferential arrangement of allotments. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recon. granted in part 5 FCC Rcd 7094 (1990). We evaluate television petitions for a change in community of license pursuant to the television allotment priorities set forth in the Sixth Report and Order on Television Allocations, 41 FCC 148 (1952).<sup>1</sup>

<sup>1</sup>The television allotment priorities are: 1) provide at least one television service to all parts of the United States; 2) provide each community with at least one television broadcast station; 3) provide a choice of at least two television services to all parts of the United States; 4) provide each community with at least two television broadcast stations; and 5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

3. In support of its proposal, Mojave Broadcasting recognizes that it proposes to reallocate Channel 34+ from a larger to a smaller community. However, Mojave Broadcasting notes that the reallocation of Channel 34 to Laughlin would provide a first local service to Laughlin and enable Station KMCC to serve a substantially larger population and area. Specifically, the currently authorized transmitter site for Station is located at Crossman Peak, approximately 13.8 kilometers east-northeast of Lake Havasu City. There is no commercial electric power available at Crossman Peak and the on-site generated electricity is sufficient only to power a ten-kilowatt television transmitter. As a result, Station KMCC would have provided Grade B service to approximately 51,274 persons in an area of 10,193 square kilometers which includes a second visual service to 49,273 persons in an area of 9,572 square kilometers. In order to maximize coverage, Mojave Broadcasting identified a site at an antenna farm at Goldroad Crest. From this site, Station KMCC will provide a Grade B service to 106,572 in an area of 33,979 square kilometers which includes a second visual service to 62,088 persons in an area of 21,182 square kilometers. In regard to this site, Mojave Broadcasting contends that it is "doubtful" that an operation from this site would provide city grade coverage to Lake Havasu City because of "shadowing problems."

4. Mojave Broadcasting also recognizes that it is proposing to remove the only television channel allotted to Lake Havasu City. In this regard, Mojave Broadcasting states that Station KMCC has not yet commenced operation at Lake Havasu City and therefore does not represent a loss of service upon which the public has come to rely. In view of this fact and the substantial gain in Grade B and second visual service, Mojave Broadcasting contends that its proposed reallocation to Laughlin would be in the public interest. Cf. Farmington and Gallup, New Mexico, 11 FCC Rcd 2357 (1996). Mojave Broadcasting also notes that Laughlin is listed as a Census Designated Place which the Laughlin Chamber of Commerce estimates the current population to be between 8,000 and 9,000 persons. Laughlin is governed by a town advisory board and a town manager. In addition, Laughlin has its own library and medical center as well as an elementary and a high school.

5. In view of the foregoing, we are proposing to reallocate NTSC Channel 34+ from Lake Havasu City, Arizona, to Laughlin, Nevada, and modify the construction permit of Station KMCC to specify Laughlin, Nevada, as its community of license.<sup>2</sup> In this vein, we are also proposing to reallocate Station's KMCC's DTV Channel 32 to Laughlin, Nevada.<sup>3</sup> In regard to these proposals, we solicit comments on the availability of alternate transmitter sites that would enable Station KMCC to improve its facilities and continue to serve Lake Havasu City as its community of license. We solicit comments on the proposed amendment to the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Lake Havasu City, Arizona	34+	-----
Laughlin, Nevada	-----	34+

<sup>2</sup>The reference coordinates for the NTSC television Channel 34+ allotment at Laughlin, Nevada, are 35-01-57 and 114-21-56.

<sup>3</sup>The reference coordinates for the DTV Channel 32 allotment at Laughlin, Nevada, are 35-01-57 and 114-21-56 with an effective radiated power of 50 kilowatts at a height above average terrain of 817 meters.

We are also soliciting comments on the proposed amendment to the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, with respect to same communities, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Lake Havasu City, Arizona	32	-----
Laughlin, Nevada	-----	32

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 31, 1999, and reply comments on or before June 15, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Richard E. Wiley, Esq.  
James R. Bayes, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D. C. 20006

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and Section 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2177. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this

service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comments which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, as well as the DTV Table of Allotments, Section 73.606(b) and Section 73.622(b), respectively, of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.